

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
ROBERTO CARLOS DOMINGUEZ,)	
)	Civil No. 1:12-cv-40120-WGY
Plaintiff,)	
)	
v.)	
)	
UNITED STATES OF AMERICA, <i>et al.</i> ,)	
)	
Defendants.)	
_____)	

INDIVIDUAL DEFENDANTS' MOTION TO DISMISS

Plaintiff, Roberto Carlos Dominguez ("Plaintiff"), has brought claims against three named immigration agents in their individual capacities: Gregory C. Nevano ("Nevano"), Steven K. Roney ("Roney"), and Javier Robles ("Robles") (collectively, "Individual Defendants"). *See* Am. Compl., ECF No. 6 ¶¶ 6-8.¹ Plaintiff's claims against the Individual Defendants should be dismissed in their entirety for the following reasons.² First, this Court lacks personal-jurisdiction over two of the Individual Defendants: Mr. Roney and Mr.

¹ Plaintiff effected service on the Individual Defendants on January 23, 2013. The Individuals Defendants now timely respond "60 days after service on the officer or employee or service on the United States attorney, whichever is later." Fed. R. Civ. P. 12(a)(3).

² Plaintiff's Amended Complaint asserts various Massachusetts State law claims against all defendants, including the Individual Defendants. *See* Am. Compl. at Claims XI – XIV. The Federal Tort Claims Act, 28 U.S.C. §§ 1346(b); 2671-2680 (1988) ("FTCA"), as amended by the Federal Employees Liability Reform and Tort Compensation Act of 1988 § 5, Pub. L. No. 100-694, 102 Stat. 4563 (1988), provides that a suit against the United States shall be the exclusive remedy for persons with claims for damages resulting from the negligent or wrongful acts or omissions of federal employees taken within the scope of their office or employment. 28 U.S.C. § 2679(b)(1). Accordingly, the Individual Defendants filed a Notice of Substitution, effectively dismissing all Massachusetts State law claims as stated against them. *See* ECF No. 18.

Robles. *See* Fed. R. Civ. P. 12(b)(2). Second, all claims arising from Plaintiff's removal in 1999 are barred by the Massachusetts three-year statute of limitations. *See* Fed. R. Civ. P. 12(b)(6). Third, Plaintiff has failed to assert any plausible claims against any of the Individual Defendants for which relief can be granted. *See id.* Fourth, Plaintiff's claims are barred by *Heck v. Humphrey*, 512 U.S. 477 (1994), because his 1999 removal order has never been reopened, reversed, or otherwise invalidated. Fed. R. Civ. P. 12(b)(6). Finally, the Individual Defendants are entitled to qualified immunity, and Plaintiff fails to assert any factual allegations to suggest otherwise. *See id.*

WHEREFORE, the Individual Defendants, Gregory C. Nevano, Steven K. Roney, and Javier Robles, respectfully request that this Court dismiss all claims against them in their individual capacities. The Individual Defendants submit herewith an accompanying Memorandum of Law.

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Respectfully submitted,

GREGORY C. NEVANO, STEVEN K. RONEY, AND
JAVIER ROBLES,

By their attorneys,

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/s/ Jennifer A. Bowen
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Date: March 25, 2013

LOCAL RULE 7.1 CERTIFICATION

Local Rule 7.1(a)(2) requires counsel to certify that they have conferred in advance of filing a motion. Counsel for the Individual Defendants corresponded with plaintiff's counsel via email on March 22, 2013, and attempted in good faith to resolve or narrow the issues.

/s/ Jennifer A. Bowen
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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) on March 25, 2013.

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